

adoption of responsible performance-oriented compensation standards. What I have suggested are standards that have been developed already by the Federal Reserve System and the Financial Stability Board, which is the council of major central banks.

Some financial institutions have already begun to implement these standards. But we need them to apply to all those major financial institutions. It only takes one reckless and irresponsible institution to wreak havoc on our financial system. So by requiring the very largest banks to tie the pay of their highest paid executives to the long-term performance of that financial institution is sound, responsible reform we should be able to agree on. Remember, it has already been adopted by the Federal Reserve Board and the Financial Stability Board, which is the council of major central banks.

But today I want to address another important aspect of financial reform that is related to this complicated thing called derivatives regulation and energy speculation. Let's take derivatives. It is arcane. It is abstract. It is something folks do not understand. It is very difficult to understand. In essence, some of the examples I am going to give are—you can think of it as an insurance policy, a derivative. It is a derivation of normal financial instruments. Some derivatives provide companies with legitimate backup insurance. It is a way to hedge against the risk in the marketplace.

But the market for derivatives has gotten out of control. Many of those derivatives today are simply bets—basically gambling bets—between banks that do little if anything to benefit the Nation's economy. They help create financially speculative bubbles that increase prices, whether it is the prices at the gas pump or in the checkout line in the supermarket, but also the experience we have had that increases the prices in our housing market.

In the area of derivatives regulation, the Banking Committee bill creates some commonsense safeguards to improve accountability and transparency. Over the last two decades, much of the activity on Wall Street has moved away from traditional investment banking and asset management and into this speculation on derivatives trading. For example, in the 10-year period between 1998 and 2008, the value of outstanding derivatives grew from less than \$100 trillion to nearly \$600 trillion.

They can play an important function in managing risk, whether it is an interest rate, foreign exchange, or energy price risks. But when you allow investors to leverage all of their investment, derivatives allow speculators to take on much more risk with much less capital.

Because the trading of derivatives is largely conducted in unregulated, over-the-counter markets, the reckless speculative positions taken by companies such as AIG and others nearly brought

down the financial system. Because derivatives are used to speculate on all types of goods—not just securities—they can have significant consequences in other parts of the economy.

In early 2008, we saw the price of oil hit stratospheric heights, largely because of excessive speculation in oil and energy derivatives. There are a number of us in the Senate who have worked to close the so-called Enron loophole and clarify that energy derivatives should be traded on a regulated exchange and treated like other commodity derivatives.

The financial reform bill that is coming to the floor addresses problems in the derivatives marketplace by requiring that derivatives be traded through clearinghouses and public exchanges. It authorizes the Commodity Futures Trading Commission to establish speculative position limits on the amount of exposure that any one investor can take. For example, if you are going to be buying and selling these things on the exchanges, the person buying it—instead of turning right around and trading it—is going to have to buy and keep and hold a certain percentage of the acquisition.

These are important first steps. But the bill coming here from the committee should do more to protect the taxpayers, and it should do more to stop the excessive speculation that can drive up prices. Take, for example, gas prices. I am going to be offering an amendment to do just that. It is going to require that regulators set hard caps on the positions taken by energy traders. In other words, there would be only a certain amount they could buy of all that particular speculative product.

My amendment would eliminate the loopholes in the bill that will come to the floor that would allow these unwarranted exemptions from those limits. The amendment would require these limits be put in place by a date later this year.

I am concerned the committee bill coming to the floor retains current rules in the Bankruptcy Code that give the so-called counterparties in derivative contracts special, preferred treatment when a firm becomes insolvent. This special treatment ensures that Wall Street banks and other large traders are put at the front of the line over an insolvent firm's customers.

I want to give you an example. It was most apparent in late 2008 when billions of taxpayer dollars were given to AIG, which was deemed too large to fail. Then those taxpayer dollars in the bailout, through the TARP funds, actually flowed through to counterparties, which were people who had bought these derivatives like insurance policies, and they paid them off.

Goldman Sachs received \$13 billion from the taxpayers through the Federal bailout of AIG. Do you think that goes over well on American Main Street, when they see Wall Street having the Federal Government saving a firm like AIG and then it turns around

and pays off on those speculative derivatives—in this case, to Goldman Sachs for \$13 billion? That does not go over very well, and it is not fair.

We simply need to eliminate the special treatment Wall Street banks and other financial firms that hold large derivative positions receive in the bankruptcy and liquidation process.

I am going to offer an amendment to clarify that those derivative counterparties—such as that insurance policy for which I gave the example where AIG paid off Goldman Sachs—those kinds of speculative ventures are never again going to jump to the front of the line in the bankruptcy process—ahead of whom? Ahead of taxpayers and customers and other creditors.

It is time for us to move ahead with financial reform. So when we get around to whether we are even going to take up this bill, a vote against the motion to proceed to get to the bill is a vote against reform. It is a vote in favor of continued bailouts. The Banking Committee has produced a strong committee bill, and I hope here on the floor, with amendments, we will make it even stronger. I hope our colleagues will join us in this effort.

Mr. President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, what is the pending business?

The PRESIDING OFFICER. We are in executive session.

Mrs. FEINSTEIN. I will speak on the nominee at this time.

I come to the floor to support the nomination of Dr. Lael Brainard to be the next Under Secretary of the Treasury for International Affairs.

Before I proceed, let me say I have known Lael Brainard for some time. We participated together in a strategy group held by the Aspen Institute, I think, for more than a decade now. I found her to be very incisive and bright. Additionally, in the course of her work at the Brookings Institution's Global Economy and Development Program she has worked with my husband over a period of some 6 years now. He has gotten to know her well as well.

On March 23, 2009, President Obama nominated Dr. Brainard to be the Under Secretary of the Treasury for International Affairs. This is an especially important position in the executive branch, and never more so than during this very critical time for the domestic and global economies. Yet her nomination has languished for more than a year—another casualty of obstructionist behavior, I believe, from our colleagues across the aisle.

The Under Secretary position for which Dr. Brainard has been nominated